

Kaiser (C.B) vs Monroe Clinic, et al.

3:19-cv-00315

Transcript of the Testimony of:

DAVID GIBSON

March 05, 2020



03/05/2020

GIBSON, DAVID

Page 1

Page 1

1 IN THE UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF WISCONSIN

3
4 CORTNEY KAISER, Individually,)

5 and as mother and next friend)

6 of C.B., a minor,)

7 Plaintiff,)

8 vs.) No. 3:19-cv-00315

9 THE MONROE CLINIC, INC., and)

10 WISCONSIN INJURED PATIENTS)

11 AND FAMILIES COMPENSATION)

12 FUND,)

13 Defendants.)

14
15 The deposition of DAVID GIBSON, called
16 for examination, taken pursuant to the Federal
17 Rules of Civil Procedure of the United States
18 District Courts pertaining to the taking of
19 depositions, taken before KRISTIN C. BRAJKOVICH, a
20 Certified Shorthand Reporter, CSR. No. 84-3810, of
21 said state, at Suite 101, 1111 Westgate Street, Oak
22 Park, Illinois, on the 5th day of March, A.D. 2020,
23 at 9:12 a.m.
24
25

<p>Page 2</p> <p>1 PRESENT:</p> <p>2</p> <p>3 COPLAN & CRANE,</p> <p>4 (1111 Westgate Street, Suite 101,</p> <p>5 Oak Park, Illinois 60301,</p> <p>6 1-708-590-4896), by:</p> <p>7 MR. STEPHEN M. BLECHA,</p> <p>8 sblecha@coplancrane.com,</p> <p>9 appeared on behalf of Plaintiff;</p> <p>10</p> <p>11 LEIB KNOTT GAYNOR LLC,</p> <p>12 (219 North Milwaukee Street, Suite 710,</p> <p>13 Milwaukee, Wisconsin 53202,</p> <p>14 1-414-276-2102), by:</p> <p>15 MR. BRENDEN LEIB,</p> <p>16 bleib@lkglaw.net,</p> <p>17 appeared on behalf of Defendant</p> <p>18 The Monroe Clinic, Inc.;</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 4</p> <p>1 I N D E X</p> <p>2 WITNESS EXAMINATION</p> <p>3 DAVID GIBSON</p> <p>4 By Mr. Weir 5</p> <p>5</p> <p>6</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9 NUMBER PAGE</p> <p>10 Gibson Deposition Exhibit</p> <p>11 No. 1 - Notice of Deposition 5</p> <p>12 No. 2 - Testimony Report 5</p> <p>13 No. 3 - Gibson File Review Notes 5</p> <p>14 No. 4 - Life Care Plan 5</p> <p>15 No. 5 - Evaluatee Interview Form 5</p> <p>16 No. 6 - Economic Indices 5</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 3</p> <p>1 PRESENT (Continued):</p> <p>2</p> <p>3 OTJEN LAW FIRM, S.C.,</p> <p>4 (20935 Swenson Drive, Suite 310,</p> <p>5 Waukesha, Wisconsin 53186,</p> <p>6 1-262-777-2200), by:</p> <p>7 MR. TODD M. WEIR,</p> <p>8 tweir@otjen.com,</p> <p>9 appeared on behalf of Defendant</p> <p>10 Wisconsin Injured Patients and Families</p> <p>11 Compensation Fund.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 REPORTED BY: KRISTIN C. BRAJKOVICH,</p> <p>25 CSR No. 84-3810.</p>	<p>Page 5</p> <p>1 (WHEREUPON, certain documents</p> <p>2 were marked Gibson Deposition</p> <p>3 Exhibit Nos. 1 through 6, for</p> <p>4 identification and the witness was</p> <p>5 duly sworn.)</p> <p>6 DAVID GIBSON,</p> <p>7 called as a witness herein, having been first duly</p> <p>8 sworn, was examined and testified as follows:</p> <p>9 EXAMINATION</p> <p>10 BY MR. WEIR:</p> <p>11 Q. You are David Gibson, correct?</p> <p>12 A. I am.</p> <p>13 Q. And you understand we are here for a</p> <p>14 deposition in a case called CB versus</p> <p>15 The Monroe Clinic?</p> <p>16 A. I do.</p> <p>17 Q. You have given many depositions before,</p> <p>18 right?</p> <p>19 A. I have.</p> <p>20 Q. So you understand the basic rules,</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. I'm going to ask you to wait until I'm</p> <p>24 done with my question. I, in turn, will wait until</p> <p>25 you are done with your answer. People tell me I</p>

03/05/2020

GIBSON, DAVID

Pages 6-9

<p style="text-align: right;">Page 6</p> <p>1 have a little bit of a habit of seeming like I'm</p> <p>2 done with the question, but I am not, so let me</p> <p>3 kind of spit it out. Okay?</p> <p>4 A. Okay.</p> <p>5 Q. And the important thing is if you answer</p> <p>6 a question, we are going to assume, A, that you</p> <p>7 understood the question and, B, that your answer</p> <p>8 was truthful and responsive. Does that sound fair?</p> <p>9 A. Yes.</p> <p>10 Q. You have got a CV in front of you,</p> <p>11 correct?</p> <p>12 A. I do.</p> <p>13 Q. And you work for Vocational Economics,</p> <p>14 Inc., out of Louisville, Kentucky, right?</p> <p>15 A. Yes.</p> <p>16 Q. And last I saw, they had 15 to 17</p> <p>17 employees. Still the case?</p> <p>18 A. Best estimate, yes. I can't give you an</p> <p>19 exact number, but that is fair.</p> <p>20 Q. And you are a forensic economist?</p> <p>21 A. Yes.</p> <p>22 Q. And have done exclusively forensic</p> <p>23 economist work since 2011?</p> <p>24 A. Yes.</p> <p>25 Q. How many --</p>	<p style="text-align: right;">Page 8</p> <p>1 A. It does.</p> <p>2 Q. And a second report of November 25,</p> <p>3 2019, deals with the vocational losses, correct?</p> <p>4 A. Yes.</p> <p>5 Q. We have a case list, which we have</p> <p>6 marked as Exhibit 2, correct?</p> <p>7 A. We do.</p> <p>8 Q. And that was updated actually just</p> <p>9 through a month ago, right?</p> <p>10 A. Yes.</p> <p>11 Q. You have provided some testimony in</p> <p>12 Wisconsin, correct?</p> <p>13 A. I have.</p> <p>14 Q. Of the cases where you have provided</p> <p>15 testimony in the last five years, am I correct that</p> <p>16 95 percent have been for the plaintiff?</p> <p>17 A. Yes.</p> <p>18 Q. And that has actually been consistent if</p> <p>19 we take it back even 10 or 15 years?</p> <p>20 A. I believe so.</p> <p>21 Q. Somewhere I saw your charges. I think</p> <p>22 you are up to \$720 an hour for review?</p> <p>23 A. No. For the report itself, it's a flat</p> <p>24 fee, so a flat fee of \$5,200 for the loss of</p> <p>25 earnings report and \$2,400 for the present value of</p>
<p style="text-align: right;">Page 7</p> <p>1 A. Exclusively, yes. Really all of the</p> <p>2 work of Vocational Economics is forensic economics,</p> <p>3 so I have been doing that since '93.</p> <p>4 Q. Okay. And how many forensic economists</p> <p>5 does Vocational Economics, Inc., have?</p> <p>6 A. Again, I can't give you an exact number,</p> <p>7 but probably people that provide either the</p> <p>8 vocational side or the economic side, about 11 or</p> <p>9 12.</p> <p>10 Q. Do they do services nationwide?</p> <p>11 A. Yes.</p> <p>12 Q. You are paid by Vocational Economics,</p> <p>13 Inc., right?</p> <p>14 A. Yes.</p> <p>15 Q. And your income is directly dependent on</p> <p>16 the volume of work that you do?</p> <p>17 A. Yes.</p> <p>18 Q. Exhibit 3, is this a list of all of the</p> <p>19 documents which you have reviewed in this case?</p> <p>20 A. Yes.</p> <p>21 Q. And you have issued two reports. One</p> <p>22 dated November 21, 2019, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And that deals with the losses</p> <p>25 associated with the life care plan, correct?</p>	<p style="text-align: right;">Page 9</p> <p>1 the life care plan. Then after that any</p> <p>2 non-testimony time is \$520 per hour, and the \$720</p> <p>3 per hour that you were referring to is for</p> <p>4 testimony time.</p> <p>5 Q. All right. Before we got started, I</p> <p>6 gave you Exhibit 1, which is a notice of</p> <p>7 deposition?</p> <p>8 A. Yes.</p> <p>9 Q. And you indicated that, without casting</p> <p>10 aspersions on the gentleman seated to your right,</p> <p>11 you had not seen this before?</p> <p>12 A. I don't believe that I have.</p> <p>13 Q. Let's just go through this. One is the</p> <p>14 complete file?</p> <p>15 A. Yes.</p> <p>16 Q. We have that, correct?</p> <p>17 A. You do.</p> <p>18 Q. Did you consult any outside sources in</p> <p>19 conjunction with your work?</p> <p>20 A. The only sources that I cite in my</p> <p>21 reports are various statistics from the Bureau of</p> <p>22 Labor Statistics, the Census Bureau, and others.</p> <p>23 Q. You took the numbers from Dr. Gary</p> <p>24 Yarkony and used them in your life care plan</p> <p>25 calculations, true?</p>

03/05/2020

GIBSON, DAVID

Pages 10-13

<p style="text-align: right;">Page 10</p> <p>1 A. Yes.</p> <p>2 Q. You have worked with Dr. Yarkony before,</p> <p>3 I assume?</p> <p>4 A. I have never really worked with him, but</p> <p>5 I have evaluated his life care plans before, yes.</p> <p>6 Q. So "work with" is probably too broad or</p> <p>7 maybe too specific a term. You have been involved</p> <p>8 in other cases where you have been asked by</p> <p>9 plaintiffs to do a life care plan and you have</p> <p>10 based your calculations on Mr. Yarkony's life care</p> <p>11 plan, fair?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know how many times?</p> <p>14 A. I don't. I would probably say that I</p> <p>15 see life care plans by Dr. Yarkony anywhere from</p> <p>16 five to eight times per year.</p> <p>17 Q. And if we total up your depositions in</p> <p>18 Exhibit 2, we don't need to do the arithmetic, but</p> <p>19 there's well over 100 for 2019?</p> <p>20 A. Yes, yes.</p> <p>21 Q. While we are on the topic, how often</p> <p>22 have you worked with this law firm, Coplan & Crane?</p> <p>23 Right?</p> <p>24 A. Over the last five years, I would say</p> <p>25 two to five times per year.</p>	<p style="text-align: right;">Page 12</p> <p>1 the mathematics with it.</p> <p>2 Q. Right. You just take those numbers and</p> <p>3 do the economic calculations, fair?</p> <p>4 A. That's right.</p> <p>5 Q. And so if there was a different life</p> <p>6 care plan with different numbers, you could plug</p> <p>7 that in and do the calculations for that as well?</p> <p>8 A. I could.</p> <p>9 Q. The point is, at a trial in this matter,</p> <p>10 you are not going to be saying, Based on my years</p> <p>11 of doing this work and reviewing life care plans,</p> <p>12 Dr. Yarkony's life care plan is a reasonable life</p> <p>13 care plan?</p> <p>14 A. True.</p> <p>15 Q. Okay. Any reports. I'm on No. 2.</p> <p>16 A. Yes.</p> <p>17 Q. We have those, right?</p> <p>18 A. We do.</p> <p>19 Q. CV, we have got that?</p> <p>20 A. We do.</p> <p>21 Q. Four, the recent list, we have that?</p> <p>22 A. Yes.</p> <p>23 Q. Publications, we can find that on your</p> <p>24 CV, right?</p> <p>25 A. Exactly.</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. When did you first start working with</p> <p>2 this firm?</p> <p>3 A. Probably around 2007, when I relocated</p> <p>4 to the Chicago market from Louisville.</p> <p>5 Q. How often have you worked with Kevin</p> <p>6 Burke, do you know?</p> <p>7 A. Only two times, I believe.</p> <p>8 Q. From your testimony list, some of your</p> <p>9 cases involve business litigation, some involve</p> <p>10 injuries. Do you have a breakdown for the last</p> <p>11 five years what percentage have been business</p> <p>12 litigation or non-injury or death, we are including</p> <p>13 in injury litigation?</p> <p>14 A. I would say that approximately</p> <p>15 15 percent of the work that I do is either</p> <p>16 commercial in nature or employment in nature. Then</p> <p>17 the other 85 would be the personal injury arena.</p> <p>18 Q. Getting back to Dr. Yarkony. You do not</p> <p>19 vouch for his life care plan, review it, put your</p> <p>20 stamp of approval on it or stamp of disapproval on</p> <p>21 it in any way, shape, or form, fair?</p> <p>22 A. That's fair. I would state explicitly</p> <p>23 that I rely upon Dr. Yarkony to identify what is</p> <p>24 needed, how much it currently costs, and how</p> <p>25 frequently it's needed. My role is merely doing</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Here is what I don't see, and maybe you</p> <p>2 have it, itemization of hours spent and how much</p> <p>3 you have billed or received in this case. Do we</p> <p>4 have that?</p> <p>5 A. It does not exist in terms of hours.</p> <p>6 The reports I bill as a flat fee. I don't track</p> <p>7 hours until after the date of the report, so the</p> <p>8 only hours that I have had so far, where I would</p> <p>9 track them, would be the preparation for the</p> <p>10 deposition.</p> <p>11 Q. How many hours have we got there at the</p> <p>12 \$520 an hour?</p> <p>13 A. Probably about an hour and a half.</p> <p>14 Q. And today hopefully will be less than an</p> <p>15 hour and a half, I can tell you that. Okay?</p> <p>16 Any records, charts, notes, we have</p> <p>17 covered that, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Did you make any notes separate and</p> <p>20 apart from your report regarding the life care</p> <p>21 plan, which are retrievable?</p> <p>22 A. Any notes I have will be -- did they</p> <p>23 turn over my file to you beforehand?</p> <p>24 Q. Yes.</p> <p>25 A. So any notes I had will be part of that</p>

03/05/2020

GIBSON, DAVID

Pages 14-17

<p style="text-align: right;">Page 14</p> <p>1 file. With regard to the life care plan, the only 2 thing that would exist would be a document -- and I 3 printed multiple pages per side -- that looks 4 something like that, which is input verification to 5 make sure that we got Dr. Yarkony's numbers input 6 correctly. 7 Q. Let me see that. 8 A. Sure. It looks very similar to the 9 detail on the report itself, but it's slightly 10 different. 11 Q. Looks similar to the charts attached to 12 your report, right? 13 A. It does, but it doesn't -- it has a 14 little bit more detail to it than what is attached 15 to the report. 16 Q. Who makes this document that I'm going 17 to mark Exhibit 4? Who inputs this data? 18 A. What you marked includes Dr. Yarkony's 19 plan itself, but who inputs the data into our 20 spreadsheet would be one of my two assistants, most 21 likely a lady named Anne Rinke, A-n-n-e, R-i-n-k-e. 22 Q. Okay. And Exhibit 4, again for our 23 record, is what? 24 A. Exhibit 4 is a combination of -- the 25 first set is Dr. Yarkony's plan itself. The next</p>	<p style="text-align: right;">Page 16</p> <p>1 provide depositions and how to be effective expert 2 witnesses? 3 A. No, I don't. 4 Q. Is there any discussion about that? 5 A. Not with me. I am sure that somebody 6 must talk to them about it when they are brought 7 in, but nobody has asked me to do that. 8 Q. You have, over the years, given many 9 lectures to groups of trial attorneys, fair? 10 A. I have. 11 Q. How many times in the last five years 12 have you given lectures to groups of trial 13 attorneys? 14 A. In the last five years, not that many. 15 It has been quite a while since I have. 16 I guess in the last five years 17 specifically, none. The first one I see would be a 18 little more than five years ago -- I'm sorry -- 19 just barely within five years, a webinar, I believe 20 it was, on No. 71 on my CV, which would be May 8th 21 of 2015. 22 Q. And what was that webinar about? 23 A. Complications and assessments of lost 24 earnings. 25 Q. Do you know if you have any materials</p>
<p style="text-align: right;">Page 15</p> <p>1 set is the input verification pages that I 2 mentioned, which is nine pages if they were printed 3 out full size. Then the final page is the -- a 4 copy of the U.S. life tables for males that I used 5 for the life expectancy. 6 Q. Okay. Let's lay that aside now and go 7 back to your CV, if we can. 8 A. Sure. 9 Q. We have Vocational Economics, Inc., out 10 of Louisville, 1993 to present, correct? 11 A. Yes. 12 Q. And three bullet points down it says, 13 Assess present cash value of future medical care 14 costs. That is part of what you are doing here? 15 A. It is. 16 Q. The next bullet point is, Consult with 17 and train experts in vocational and economic 18 analysis. What is that work? 19 A. That is working with other experts 20 within Vocational Economics and is -- needed either 21 training them on the statistics that we employ, the 22 type of work that we do, or consulting with them as 23 they come up with nuances in the cases that they 24 are analyzing. 25 Q. Do you train these individuals on how to</p>	<p style="text-align: right;">Page 17</p> <p>1 that were submitted for that webinar? 2 A. I believe I would probably have a 3 PowerPoint presentation. 4 Q. All right. So if you still have that 5 PowerPoint, I'm just going to ask you to preserve 6 it. Okay? 7 A. Sure. 8 Q. Then we can iron out the details as to 9 whether it will be turned over to me. Okay? 10 A. Okay. 11 Q. No. 80 is, Use of ACS to improve 12 occupational earnings estimate. ACS, again remind 13 me what that is? 14 A. That is the American Community Survey. 15 Q. And 69, I thought that is what it was, 16 but 69 says, Use of disability data from American 17 Community Survey, so that follows on that, correct? 18 A. It does. 19 Q. 65 is, Loss of lifetime earnings from 20 brain injury presentation to Illinois and Indiana 21 continuing legal education. Do you still have a 22 PowerPoint from that? 23 A. I should, yes. 24 Q. Okay. I'm going to ask you to preserve 25 that too. Okay?</p>

03/05/2020

GIBSON, DAVID

Pages 18-21

<p style="text-align: right;">Page 18</p> <p>1 A. Okay.</p> <p>2 Q. 64 is, Economic damages in cases of</p> <p>3 catastrophic or total disability, Illinois and</p> <p>4 Indiana continuing legal education. Same issue,</p> <p>5 you probably still have a PowerPoint?</p> <p>6 A. Yes.</p> <p>7 Q. And you are willing to preserve it so we</p> <p>8 can work out the data of me obtaining it or not</p> <p>9 obtaining it. Okay?</p> <p>10 A. Okay.</p> <p>11 Q. 53 is, Proving economic loss, winning</p> <p>12 civil cases with expert testimony, Plymouth,</p> <p>13 Michigan, State Bar of Michigan. I assume you</p> <p>14 still have a PowerPoint for that one?</p> <p>15 A. Yes.</p> <p>16 Q. And I'm going to ask you to keep that as</p> <p>17 well. Fair?</p> <p>18 A. Yes.</p> <p>19 Q. You'll do that. All of the way back to</p> <p>20 2000, No. 15, Defining economic damages in medical</p> <p>21 malpractice cases, presentation and meeting for</p> <p>22 Wilson Elser, a New York law firm?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know if you have materials from</p> <p>25 that?</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Yes.</p> <p>2 Q. And assistance at home, we have</p> <p>3 23,303,000 to 28,105,000. And can you point to me</p> <p>4 in the report itself or the tables where we have</p> <p>5 the breakdown as to how you got that range based</p> <p>6 upon what Dr. Yarkony indicated were the potential</p> <p>7 assistance needs at home?</p> <p>8 A. Yes. That would be on page 10 of 14.</p> <p>9 Q. Okay.</p> <p>10 A. And there are the line items that are</p> <p>11 consistent with Dr. Yarkony's report. I'm looking.</p> <p>12 Dr. Yarkony habitually never has page numbers on</p> <p>13 his, but he has a category called Assistance At</p> <p>14 Home, so this would correspond with that.</p> <p>15 Q. Let me see what you have for</p> <p>16 Dr. Yarkony's report.</p> <p>17 A. Sure.</p> <p>18 Q. You are looking at Exhibit 4?</p> <p>19 A. Yes. I'm sorry. And this would be the</p> <p>20 sixth page, where the very first page was a fax</p> <p>21 cover page. It was really the fifth page of what</p> <p>22 he produced.</p> <p>23 Q. Do you have a copy of Dr. Yarkony's</p> <p>24 report handy?</p> <p>25 A. Exhibit 4.</p>
<p style="text-align: right;">Page 19</p> <p>1 A. That one I'm not sure about.</p> <p>2 Q. We may be stretching it.</p> <p>3 A. Yeah. It's quite possible that I do,</p> <p>4 but I can't say for sure.</p> <p>5 Q. Let's go in terms of any notes. Are the</p> <p>6 only notes that you have not associated with your</p> <p>7 report that you have generated retrievable?</p> <p>8 A. I would say that the notes that I have</p> <p>9 would be the combination of what is in Exhibit 4,</p> <p>10 what is in Exhibit 3, then my interview notes.</p> <p>11 Q. And we have marked your interview notes</p> <p>12 as 5, right?</p> <p>13 A. Yes.</p> <p>14 Q. And what have you got now?</p> <p>15 A. This would be a document that you should</p> <p>16 have received, but it's essentially the tabs from</p> <p>17 my Microsoft Excel workbook that contain statistics</p> <p>18 that I employed and background computations.</p> <p>19 Q. All right. I have marked this document,</p> <p>20 the background computations, as 6, correct?</p> <p>21 A. Yes.</p> <p>22 Q. All right. So if we work off of your</p> <p>23 November 21, 2019, report.</p> <p>24 A. Okay.</p> <p>25 Q. And we have various categories, correct?</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. That is how you reduce it down and input</p> <p>2 it?</p> <p>3 A. No. Actually, on my computer, I have it</p> <p>4 full size, but to save my back when I print it out</p> <p>5 to bring to the deposition, I print multiple sides</p> <p>6 per page.</p> <p>7 Q. I'm relying on you to put 4 back</p> <p>8 together. Okay?</p> <p>9 A. I will.</p> <p>10 Q. So here is the page of Yarkony's report</p> <p>11 from which you got the information on Exhibit 4,</p> <p>12 fair?</p> <p>13 A. It is.</p> <p>14 Q. Okay. So we have, RN/LPN, right?</p> <p>15 A. Yes.</p> <p>16 Q. And his rates vary. Where on your</p> <p>17 page 10 do we see the spread and the picking of</p> <p>18 which rate higher, lower?</p> <p>19 A. So note that on -- for that first group,</p> <p>20 he is covered until age 12. Then within age 12, he</p> <p>21 has two different providers that cover school days,</p> <p>22 and note that the first provider of the repeat</p> <p>23 medical has a range of 36,630 to 44,030 per year.</p> <p>24 The second provider has exactly 38,480, which is</p> <p>25 within that range in the first group.</p>

03/05/2020

GIBSON, DAVID

Pages 22-25

<p style="text-align: right;">Page 22</p> <p>1 So what you see on page 10 of my report</p> <p>2 is the quantification of that first group of 36,000</p> <p>3 to 44,000 under the annual cost column, if I could</p> <p>4 just point it out.</p> <p>5 Q. Sure.</p> <p>6 A. So that will correspond with that. And</p> <p>7 then I'm saying that extending that out for the</p> <p>8 number of years, nine years until he's age 12,</p> <p>9 would give you what the current cost is and the</p> <p>10 present value because this would qualify as a</p> <p>11 professional service, would be a pure offset in</p> <p>12 terms of the net present value that would be the</p> <p>13 same present value as current cost.</p> <p>14 Q. Okay. So if we take the first item to</p> <p>15 age 12, 36,630, is the present value that</p> <p>16 corresponds with that 36,630 the 329,670?</p> <p>17 A. Yes.</p> <p>18 Q. And then is the \$44,030, does the</p> <p>19 present value number that corresponds if you take</p> <p>20 that and make the calculation from 44,030, 396,270?</p> <p>21 A. It is.</p> <p>22 Q. And that is true throughout your report?</p> <p>23 A. It is.</p> <p>24 Q. So that is the methodology you employ,</p> <p>25 and we could go through each and every item and the</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. And this comes from CPI?</p> <p>2 A. It does.</p> <p>3 Q. Your investment vehicle, is it still</p> <p>4 90-day T-bills?</p> <p>5 A. Right. That is the very last row there,</p> <p>6 where I'm showing that the long-term would be</p> <p>7 4.7 percent nominal or 1 percent real. So</p> <p>8 comparing the 1.1 percent growth for professional</p> <p>9 services to the 1 percent interest is what gives me</p> <p>10 that pure offset, saying that is 0 percent.</p> <p>11 Q. You lost me here. Which column on 1E do</p> <p>12 I have?</p> <p>13 A. I'm sorry. So comparing this number --</p> <p>14 Q. Gotcha. It's the bottom?</p> <p>15 A. Yes, it is.</p> <p>16 Q. All right. With the stock market being</p> <p>17 the way it is, it's probably the wrong time for me</p> <p>18 to bring this point to your attention?</p> <p>19 A. Actually so, but go ahead.</p> <p>20 Q. You know what this is, Stocks, Bonds,</p> <p>21 Bills, and Inflation by Ibbotson, I-b-b-o-t-s-o-n?</p> <p>22 A. You are doing very well. Most attorneys</p> <p>23 call it Ibbotson. You pronounced it correctly.</p> <p>24 Q. And you agree that this book is market</p> <p>25 quotations and tabulations generally used and</p>
<p style="text-align: right;">Page 23</p> <p>1 answers would be the same?</p> <p>2 A. The only variance is that the net</p> <p>3 discount rate that I apply will be different, but</p> <p>4 the lion's share of the costs under Dr. Yarkony's</p> <p>5 plan falls under professional services where the</p> <p>6 net discount rate is zero.</p> <p>7 Q. And why is the net discount rate for</p> <p>8 what we have got in your report as assistance at</p> <p>9 home zero?</p> <p>10 A. There I would note back on page 3 of my</p> <p>11 report -- I'll let you get there.</p> <p>12 Q. Yep.</p> <p>13 A. On page 3, I show the long-term</p> <p>14 inflation rates for various medical -- categories</p> <p>15 of the Consumer Price Index. The one that covers</p> <p>16 the services that we just looked at would be the</p> <p>17 one that has 1E over in the left-hand column,</p> <p>18 Professional Services.</p> <p>19 And their note, following that over to</p> <p>20 the first number column, shows that long-term, the</p> <p>21 last 60 years, that has averaged 4.8 percent in</p> <p>22 nominal terms, backing out of the general rate of</p> <p>23 inflation. The next row down shows that that would</p> <p>24 be essentially 1.1 percent above the rate of</p> <p>25 inflation.</p>	<p style="text-align: right;">Page 25</p> <p>1 relied upon by forensic economists like you, if you</p> <p>2 want to track at least what the data is?</p> <p>3 A. Yes, if you want to track investment</p> <p>4 data.</p> <p>5 Q. Right. And inflation data?</p> <p>6 A. Yes.</p> <p>7 Q. And it's reliable and used by forensic</p> <p>8 economists like you?</p> <p>9 A. Well, no, I won't say that. To do the</p> <p>10 work that I'm doing here, it really does not apply</p> <p>11 that much.</p> <p>12 Q. Because you don't use large corporate</p> <p>13 stocks or large corporate bonds or small corporate</p> <p>14 stocks as an investment vehicle?</p> <p>15 A. That's right.</p> <p>16 Q. But if someone was to use those</p> <p>17 investment vehicles, Ibbotson's is a reliable</p> <p>18 source to find out and track how those investment</p> <p>19 vehicles have performed?</p> <p>20 A. Yes.</p> <p>21 Q. And for any 20-year period, all of the</p> <p>22 way back to The Depression, when you take a whole</p> <p>23 20-year period, stocks have outperformed the 90-day</p> <p>24 T-bill by a substantial amount?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 26</p> <p>1 Q. But you have lectured and testified 2 before that you don't want to use that as an 3 investment vehicle because you want a, quote, No 4 risk investment vehicle under circumstances like 5 this, when you have life care plans for medical 6 needs? 7 A. Yes. 8 Q. And that has consistently been your 9 opinion? 10 A. It is. 11 Q. Some forensic economists disagree? 12 A. Some. 13 Q. And reasonable forensic economists can 14 disagree on what investment vehicles should be 15 used, fair? 16 A. Fair. 17 Q. So you did the November 21, 2019, 18 report, right? 19 A. Yes. 20 Q. With the assistance of people who their 21 involvement was limited to inputting the data? 22 A. Yes. 23 Q. And then I assume you have got a 24 computer program that allows you to use your 25 present value number and outcome the present value</p>	<p style="text-align: right;">Page 28</p> <p>1 A. That's correct. Actually, I do. 2 Q. In different ways? 3 A. My overall compensation depends on the 4 expenses of our office, and she's an expense. 5 Q. How many people are in your Chicago 6 office? 7 A. Just myself and the two people I have 8 mentioned, Maggie, who is a full-time employee, and 9 Anne, who is part-time. 10 Q. All right. So all of these pages, all 11 of the way through page 49 of this vocational 12 report, are those generated essentially for any 13 vocational loss case that you do? 14 A. I'm not sure the way that you are asking 15 that. I would say, first of all, that pages 6 16 through 43 are boilerplate pages that would include 17 any disability analysis of lost earnings. Then the 18 other pages are similar to what I prepare for any 19 similar case, but they are specific to CB. 20 Q. Okay. That is right. That is actually 21 what I meant to say. 22 A. Okay. 23 Q. Only the first five pages of your 24 November 25, 2019, are specific to young CB. 25 A. The first five and then the last six,</p>
<p style="text-align: right;">Page 27</p> <p>1 of future losses? 2 A. Correct. 3 Q. Let's go to the November 25, 2019, 4 report. 5 A. Okay. 6 Q. This is signed by you, correct? 7 A. It is. 8 Q. Who did the vocational evaluation? 9 A. I did the evaluation as far as 10 determining what my opinions were and how I was 11 going to analyze the case. In the back of 12 Exhibit 5, I would have laid out how I'm doing. 13 There's pages there called evaluae -- I'm sorry. 14 I'm on the wrong page. 15 They start a couple pages from the end 16 that are called analysis parameters. That is where 17 I lay out how I'm going to do my analysis in the 18 case. Then my case manager, who is also my wife, 19 Margaret Gibson, would set up a spreadsheet to 20 match these parameters. 21 Q. Is she an employee of Vocational 22 Economics, Inc.? 23 A. She is. 24 Q. At least you don't have to pay her out 25 of your cut?</p>	<p style="text-align: right;">Page 29</p> <p>1 those are the detailed computations. 2 Q. The last six are the tables specific to 3 CB. 4 A. That's right. 5 Q. But pages 6 through 43 are boilerplate 6 used in any vocational economic report? 7 A. Concerning disability, that's right. 8 Q. And when were the pages 6 through 43 put 9 together? 10 A. The original version probably put 11 together mid-'90s, but you'll note that there's a 12 date on the bottom of these that indicates the most 13 recent revision was May of 2019. 14 Q. Who puts together pages 6 through 43? 15 A. I have had a major role in every 16 revision. The updates that are done to it nowadays 17 are done by me and another expert at Vocational 18 Economics that will review what new research has 19 come out and include that in the citations as well 20 as updating the economic statistics that show on 21 one of the pages here. 22 Q. So pages 6 through 43 are a Vocational 23 Economics generated product? 24 A. Yes. 25 Q. With you having some input?</p>

<p style="text-align: right;">Page 30</p> <p>1 A. Yes.</p> <p>2 Q. How many others have input?</p> <p>3 A. Over the years, considering it as a</p> <p>4 cumulative document, there's probably about 12 or</p> <p>5 13 people that have had some input. I have had a</p> <p>6 major input into every version.</p> <p>7 Q. And if we go to page 5 of 49, it appears</p> <p>8 what you have done is for the losses, you have</p> <p>9 taken three potential circumstances in totality,</p> <p>10 recognizing we can't roll the clock back and</p> <p>11 predict the future with young CB.</p> <p>12 A. True.</p> <p>13 Q. So you have taken high school diploma as</p> <p>14 one, right?</p> <p>15 A. Yes.</p> <p>16 Q. And the loss there, you have indicated</p> <p>17 at \$2,039,723 in present value?</p> <p>18 A. Yes.</p> <p>19 Q. And then we have some college education</p> <p>20 but no degree, correct?</p> <p>21 A. Yes.</p> <p>22 Q. How do you define "some college</p> <p>23 education with no degree"?</p> <p>24 A. Technically, one semester of college</p> <p>25 would qualify, and that goes up to 12 years of</p>	<p style="text-align: right;">Page 32</p> <p>1 nationwide data because I don't know where they are</p> <p>2 going to reside as an adult. There's a footnote on</p> <p>3 a prior page that talks about the differences.</p> <p>4 Q. All right. You did not have any</p> <p>5 specific Wisconsin data for young CB to make</p> <p>6 these projections, fair?</p> <p>7 A. I did have the data. I did not use it.</p> <p>8 Footnote No. 3 on page 3 notes that had I used data</p> <p>9 specific to the Freeport, Illinois, area, that the</p> <p>10 earnings would have been slightly higher for the</p> <p>11 first two scenarios and slightly lower for the</p> <p>12 third.</p> <p>13 Q. Okay. I misspoke. I forgot. He lives</p> <p>14 just south of the border in Illinois?</p> <p>15 A. Right.</p> <p>16 Q. Let's go back to the November 21st</p> <p>17 report.</p> <p>18 A. Okay.</p> <p>19 Q. And I think the answer is on Table 1.</p> <p>20 For example, when we take medications, where does</p> <p>21 that fit in?</p> <p>22 A. That is under the medical commodities</p> <p>23 row, which is 1D.</p> <p>24 Q. Okay. Disposable supplies?</p> <p>25 A. Also the same row.</p>
<p style="text-align: right;">Page 31</p> <p>1 school but no diploma. They are all fairly</p> <p>2 consistent in what their earnings are.</p> <p>3 Q. All right. We have the earnings. We</p> <p>4 don't need to put them in the record. They are on</p> <p>5 page 5 of 49?</p> <p>6 A. True.</p> <p>7 Q. What source material did you use to get</p> <p>8 the income for, for example, high school diploma?</p> <p>9 A. The income depends upon how much and how</p> <p>10 long. The "how much" means how much he's making</p> <p>11 per year. That I'm relying upon the American</p> <p>12 Community Survey that shows me on an age-by-age</p> <p>13 basis, how much I would expect somebody of that</p> <p>14 level of education to earn.</p> <p>15 Secondly, the "how long" on computing,</p> <p>16 by combining the likelihood that CB would be</p> <p>17 alive at each age and the likelihood that he would</p> <p>18 be employed if he is alive. The likelihood of life</p> <p>19 I'm getting from the U.S. life tables. The</p> <p>20 likelihood of employment also comes from the</p> <p>21 American Community Survey.</p> <p>22 Q. Is the American Community Survey</p> <p>23 nationwide data?</p> <p>24 A. It is, and there's also community-wide.</p> <p>25 However, that said, for a child, I always use</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. Future feeding supplies, same?</p> <p>2 A. Yes.</p> <p>3 Q. Durable medical equipment?</p> <p>4 A. Same.</p> <p>5 Q. Additional medical care, back to 1E?</p> <p>6 A. I believe so. Let me go to that. It</p> <p>7 could vary, depending on what he has got in there,</p> <p>8 but I believe you are right. Yes, you are right.</p> <p>9 Q. Therapy until 21, back to 1E?</p> <p>10 A. Yes. I'm sorry. If I could back up to</p> <p>11 the additional medical care that I actually put</p> <p>12 under 1B for medical services because there's some</p> <p>13 testing and other labs in there that would be a</p> <p>14 little bit different than the professional</p> <p>15 services.</p> <p>16 Q. Okay. So the answer as to the discount</p> <p>17 rate for each of the services outlined by</p> <p>18 Dr. Yarkony is found in Table 1?</p> <p>19 A. Yes.</p> <p>20 Q. What is page 4 of 14?</p> <p>21 A. That takes the opinions I had from</p> <p>22 Table 1 that we just looked at, looks at that</p> <p>23 long-term average inflation rate, which shows up</p> <p>24 under the growth column, and compares it to the</p> <p>25 long-term interest rate on the 91-day Treasury</p>

03/05/2020

GIBSON, DAVID

Pages 34-37

<p style="text-align: right;">Page 34</p> <p>1 bill, then shows you what either the net discount 2 or the net growth rate would be for each of those 3 categories. 4 Q. When you do your calculations and input 5 an inflation rate, what period of time are you 6 using as your average for inflation? How many 7 years back do you capture? 8 A. 60. 9 Q. 60. Okay. Our current rate of 10 inflation is what? 11 A. Very low, about 2 to 3 percent. 12 Q. And for your investment vehicle, how 13 many years back do you go to capture the average 14 rate for the 90-day T-bills? 15 A. I do 60 years for everything. 16 Q. 60? 17 A. Yes, sir. 18 Q. What is 5 of 14? 19 A. This is the first category in 20 Dr. Yarkony's plan for medications, all of which 21 are covered under the medical commodity rate, 22 breaking them out by the medication specified. 23 Q. You have not taken into account the 24 possibility or probability that third-party payers 25 would pay any of these amounts, fair?</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Let's see here. This is part of my 2 discussion of present value and more specifically 3 discount rates that I think you are probably 4 referring to the Figure 4 there? 5 Q. Yes. 6 A. Which shows the various inflation and 7 discount rates from multiple different time frames 8 that you might look at. Once again, I'm using a 9 60-year period. 10 Q. So, for example, if we used an inflation 11 rate of ten years, it would be half of your 12 60 years? 13 A. Yes, but the net discount rate would be 14 considerably lower, and I would increase the losses 15 significantly. 16 Q. Okay. Because where do we see net 17 discount rate on Figure 4, or is that elsewhere? 18 A. It does not show you the net, but it 19 shows the discount rate, which is a 91-day Treasury 20 bill, which you would then compare to the 21 compensation growth rate. So the net discount 22 would actually be a growth of 1.8 percent. 23 Q. Do you use the Rule of 72s as a forensic 24 economist? 25 A. I don't use it. I compute exact present</p>
<p style="text-align: right;">Page 35</p> <p>1 A. That's fair. 2 Q. Page 6. I mean, it's obvious, I think, 3 disposable supplies, right? 4 A. Yes. 5 Q. So let me just go through this and see 6 if I have any questions. You have broken out each 7 category, and each category gets its own page, 8 fair? 9 A. Yes. 10 Q. And the overwhelmingly significant 11 number is the assistance at home, page 10 of 14? 12 A. Definitely. 13 Q. How often are you repurchasing a 14 wheelchair accessible van? Five years is it? 15 A. I believe so. That is back -- 16 Q. From Yarkony? 17 A. Yeah. 18 Q. You did not do any independent analysis 19 to see if a vehicle -- wheelchair accessible 20 vehicle purchased January 1st of 2021 will last ten 21 years, 20 years, two years or anything? You just 22 took Yarkony's five years and plugged it in? 23 A. That's right. 24 Q. What is page 30 of 49? It's back to the 25 Volk report?</p>	<p style="text-align: right;">Page 37</p> <p>1 value, but I recognize what it is. 2 Q. Why don't you articulate for us what the 3 Rule of 72s is. 4 A. That if you combine an interest rate 5 stated as a whole number with the number of years 6 that a value is spread or that it grows, that it 7 will double when the -- when you multiply the years 8 by the rate. So to say it more clearly, let's say 9 that you have a 6 percent interest rate. It would 10 essentially say that you need 12 years of investing 11 in an amount before it doubles. 12 Q. A 10 percent interest rate will double 13 in 7.2 years, right? 14 A. Yes. 15 Q. And on and on and on we could go. 16 You have not taught economics outside of 17 trying to teach lawyers economics? 18 A. Outside -- I won't say just lawyers but 19 economists also. Not outside of the seminars and 20 presentations, no formal teaching. 21 Q. You have never been employed by a 22 university, for example? 23 A. That's right. 24 Q. Or even for that matter, and I'm not 25 trying to belittle you, a high school or any</p>

03/05/2020

GIBSON, DAVID

Pages 38-41

<p style="text-align: right;">Page 38</p> <p>1 teaching of economics?</p> <p>2 A. That's true.</p> <p>3 Q. Did you discuss this life care plan with</p> <p>4 Dr. Yarkony?</p> <p>5 A. No.</p> <p>6 Q. And life care planning is not your area</p> <p>7 of expertise?</p> <p>8 A. That's correct.</p> <p>9 Q. And if we take a look at your report and</p> <p>10 combine it with our discussion today, do we have</p> <p>11 all of your opinions in this matter?</p> <p>12 A. I believe so.</p> <p>13 Q. You can't think of any that you did not</p> <p>14 include in your report or that you did not ferret</p> <p>15 out based on our detailed grilling this morning?</p> <p>16 A. That's correct.</p> <p>17 Q. Then I'm going to turn you over to</p> <p>18 Mr. Leib here, who probably has several hours of</p> <p>19 questions for you.</p> <p>20 MR. LEIB: Unfortunately, I have no questions.</p> <p>21 MR. BLECHA: I have several hours of</p> <p>22 questions. No, we are done.</p> <p>23 THE REPORTER: Signature?</p> <p>24 THE WITNESS: Does Wisconsin have where I need</p> <p>25 to waive or reserve?</p>	<p style="text-align: right;">Page 40</p> <p>1 STATE OF ILLINOIS)</p> <p>2) SS:</p> <p>3 COUNTY OF C O O K)</p> <p>4 I, KRISTIN C. BRAJKOVICH, a Certified</p> <p>5 Shorthand Reporter of said state, do hereby</p> <p>6 certify:</p> <p>7 That previous to the commencement of the</p> <p>8 examination of the witness, the witness was duly</p> <p>9 sworn to testify the whole truth concerning the</p> <p>10 matters herein;</p> <p>11 That the foregoing deposition transcript</p> <p>12 was reported stenographically by me,</p> <p>13 was thereafter reduced to typewriting under my</p> <p>14 personal direction and constitutes a true record</p> <p>15 of the testimony given and the proceedings had;</p> <p>16 That the said deposition was taken</p> <p>17 before me at the time and place specified;</p> <p>18 That I am not a relative or employee</p> <p>19 or attorney or counsel, nor a relative or</p> <p>20 employee of such attorney or counsel for any of</p> <p>21 the parties hereto, nor interested directly or</p> <p>22 indirectly in the outcome of this action.</p> <p>23 IN WITNESS WHEREOF, I do hereunto set my</p> <p>24 hand and affix my seal of office at Chicago,</p> <p>25 Illinois, this 20th day of March 2020.</p>
<p style="text-align: right;">Page 39</p> <p>1 MR. WEIR: He can take care of that. I think</p> <p>2 you either need to read it or you need to say that</p> <p>3 you are waiving it and relying on this lady to get</p> <p>4 it right, which she probably will, but that is your</p> <p>5 choice.</p> <p>6 THE WITNESS: I will waive.</p> <p>7 FURTHER DEPONENT SAITH NOT.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 41</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6 C.S.R. Certificate No. 84-3810.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>